

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**TANIKIA D. SMITH**  
**Plaintiff,**

**VS.**

**CITIMORTGAGE, INC.**  
**and FEDERAL NATIONAL**  
**MORTGAGE ASSOCIATION**  
**Defendants.**

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**CASE NO. 4:10CV693**

**MEMORANDUM ADOPTING REPORT AND  
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

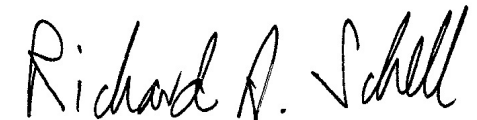
Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On February 27, 2012, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendants' Motion to Dismiss Plaintiff's Second Amended Original Complaint (Dkt. 37) be GRANTED as to Plaintiff's breach of contract claims regarding the waiver of the right to accelerate and foreclose, the breach of duty of good faith and fair dealing, and breach of unilateral contract, Plaintiff's claims of breach of common law tort of unreasonable collection efforts, Plaintiff's TDPCA claim under Sections 392.301(a)(8) and 392.303(a)(2), any claims asserted under the DTPA, Plaintiff's accounting claims, and Plaintiff's gross negligence claims and DENIED as to Plaintiff's breach of contract claims regarding notice of default and demand for past due installments prior to acceleration and violations of the Texas Property Code, Plaintiffs' TDCA claims under Sections 392.304(a)(8) and (a)(19), Plaintiff's claim for negligent misrepresentation, Plaintiff's claim for declaratory judgment, and Plaintiff's suit to quiet title and trespass to try title.

The court, having made a *de novo* review of the objections raised by Defendant, is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and that, given the disfavor with which motions to dismiss are treated, Defendant's objections are more appropriate for summary judgment proceedings. Therefore, the court hereby adopts the findings and conclusions of the Magistrate Judge regarding the motion to dismiss as the findings and conclusions of this court.

Defendants' Motion to Dismiss Plaintiff's Second Amended Original Complaint (Dkt. 37) is GRANTED as to Plaintiff's breach of contract claims regarding the waiver of the right to accelerate and foreclose, the breach of duty of good faith and fair dealing, and breach of unilateral contract, Plaintiff's claims of breach of common law tort of unreasonable collection efforts, Plaintiff's TDPCA claim under Sections 392.301(a)(8) and 392.303(a)(2), any claims asserted under the DTPA, Plaintiff's accounting claims, and Plaintiff's gross negligence claims. Defendants' Motion to Dismiss Plaintiff's Second Amended Original Complaint (Dkt. 37) is DENIED as to Plaintiff's breach of contract claims regarding notice of default and demand for past due installments prior to acceleration and violations of the Texas Property Code, Plaintiffs' TDCA claims under Sections 392.304(a)(8) and (a)(19), Plaintiff's claim for negligent misrepresentation, Plaintiff's claim for declaratory judgment, and Plaintiff's suit to quiet title and trespass to try title, and those claims shall remain pending at this time.

**IT IS SO ORDERED.**

**SIGNED this the 30th day of March, 2012.**

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

RICHARD A. SCHELL  
UNITED STATES DISTRICT JUDGE